

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CROSS MEDIAWORKS, LLC,
a Delaware limited liability company,
TELAMERICA MEDIA, LLC,
a Delaware limited liability company

Plaintiffs,

-v-

EMT HOLDINGS, LLC, a Georgia limited
liability company d/b/a eMedia Trade;
EMT & S INCORPORATED, a Nevada
corporation a.k.a. Electronic Media Trading &
Services, Inc.; and
LEONARD JOSEPH FABIANO III, an
individual,

Defendants.
-----X

No. 14 Civ. 561 (VSB)

**JOINT PRE-HEARING
STATEMENT**

Plaintiffs Cross MediaWorks, LLC (“CMW”) and TelAmerica Media, LLC (“TelAmerica”) (CMW and TelAmerica, collectively, “Plaintiffs”) and Defendants EMT Holdings, LLC, d/b/a eMedia TRADE (“eMedia”); EMT & S Incorporated, a.k.a. Electronic Media Trading & Services, Inc. (“EMT & S”) (eMedia and EMT & S collectively, the “Corporate Defendants”); and Leonard Joseph Fabiano III (“Fabiano”) (Fabiano and the Corporate Defendants collectively, “Defendants”), by and through their respective undersigned counsel, hereby submit the following Joint Pre-Hearing Statement in regard to Plaintiffs’ Motion for Preliminary Injunction set for hearing on November 17-19, 2014. Those areas agreed upon by the Parties and those areas requiring Court guidance at the Telephonic Conference scheduled for November 5, 2014, are so indicated below.

1. Witnesses (Agreed)

The Parties agree to exchange witness lists by close of business November 5, 2014. The Parties agree to identify “will call” and “may call” witnesses, and anticipated length of testimony. The Parties agree to make those witnesses identified as “will call” available to the opposing party at the hearing. The Parties agree to submit a joint list to the Court on November 7, 2014.

2. Exhibit Lists (Agreed)

The Parties agree to exchange proposed exhibit lists on November 11, 2014 by 4:00 p.m. EST, and submit a final exhibit list to the Court on November 13, 2014, with information regarding stipulation, foundation, and/or authenticity. The Parties agree to the admission of stipulated exhibits at the hearing without requiring testimony regarding foundation or authenticity.

3. Exhibit Numbering (Agreed)

The Parties agree to use a single exhibit numbering system each, i.e., Plaintiffs’ Exhibit 1 *et seq* and Defendants’ Exhibit 1 *et seq*. The Parties agree that if both Parties have a document on their proposed exhibit lists, the document be included on Plaintiffs’ Exhibit list.

4. Designation of Deposition Testimony (Agreed)

The Parties agree that deposition transcripts shall not be permitted to be offered as evidence unless offered in lieu of live testimony. The Parties agree to exchange deposition designations for those witnesses who will not provide live testimony (if any) no later than November 10, 2014, and submitted to the Court on November 13, 2014. The Parties agree that deposition transcripts used for impeachment purposes shall not be required to be designated. The parties agree to provide a copy of deposition transcripts to the Court.

5. Motions In Limine (Disputed)

Plaintiffs' Position

Plaintiffs propose that Motions in Limine not be permitted and that the Court can rule on any issues as they arise.

Defendants' Position

Defendants propose that the parties file motions in limine by November 11, 2014, in letter briefs, with no responses in opposition due. Responses of "no opposition" are due on November 14, 2014. Defendants propose that the parties will argue the motions in limine before opening arguments on November 17, 2014.

Defendants anticipate a single motion in limine to exclude Plaintiffs from introducing evidence at the hearing in support of a matter where their corporate representative, designated on that topic, was unable to provide testimony on the topic. As example, Plaintiffs' corporate designee on the topic of the steps taken to protect any alleged trade secrets could not testify to the existence of steps prior to May 1, 2014. As a further example, the designee for the agreements between the parties could not testify to any agreement from 2011 relating to development of Cross MediaWare.

6. Technology Order Allowing Computers / Electronics in the Courtroom (Agreed)

The Parties agree that (with the Court's permission) the Court should issue a Technology Order permitting the parties to bring computers, projectors, mobile phones, and associated peripherals in the Courtroom.

7. Hearing Closed to Public (Agreed)

The Parties agree to request an Order from the Court that the Courtroom be closed to the public.

8. Opening Statements (Agreed)

The Parties agree (with the Court's permission) to limit opening statements to a maximum of forty-five (45) minutes each.

9. Non-Party Witnesses (Agreed)

The Parties agree that non-party lay witnesses should be excluded for all testimony. The Parties agree that experts be permitted to remain in the Courtroom for all testimony.

10. Party Representative Exclusion (Disputed)

Plaintiffs' Position

Plaintiffs propose that Party representatives be excluded from all expert testimony.

Plaintiffs propose that Party representatives be excluded from fact witness testimony the opposing Party asserts in good faith is Attorneys' Eyes Only.

Defendants' Position

Defendants' propose that a single Party representative be permitted to remain in the Courtroom for all testimony.

11. Hearing Time (Disputed)

Plaintiffs' Position

Plaintiffs propose that they shall have until the end of the second day of the hearing to complete their affirmative case. Plaintiffs' propose to be allotted ninety (90) minutes of Court time on Wednesday for rebuttal presentation and time for closing arguments as indicated below.

Defendants' Position

Defendants propose that the Plaintiffs begin their presentation on November 17, 2014 after the motions in limine, and end their presentation by 2:00 p.m. on November 18, 2014.

The Defendants propose that they be permitted to present their opposition beginning after 2:00 p.m. on November 18, 2014, and end their presentation by the close of business on November 19, 2014.

11. Closing Arguments (Disputed)

Plaintiffs' Position

Plaintiffs propose that closing arguments be delivered at the close of evidence at the hearing. Plaintiffs propose that closing arguments be limited to a maximum of sixty (60) minutes each.

Defendants' Position

Defendants' propose that closing arguments shall be submitted in writing on December 19, 2014 with a limit of fifteen (15) pages.

12. Submission of Proposed Findings of Fact and Conclusions of Law (Disputed)

Plaintiffs' Position

Plaintiffs propose the submission of proposed findings of fact and conclusions of law by December 5, 2014.

Defendants' Position

Defendants propose the submission of proposed findings of fact and conclusions of law by December 19, 2014.

Respectfully submitted November 4, 2014

<p>s/ Evan M. Rothstein Evan M. Rothstein (admitted Pro Hac Vice) Van Aaron Hughes (admitted Pro Hac Vice) Patrick B. Hall (admitted Pro Hac Vice) BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202-4432 Telephone: (303) 223-1100 E-mail: erothstein@bhfs.com E-mail: vhughes@bhfs.com E-mail: phall@bhfs.com</p> <p>Paul J. Tanck Aaron Foldenauer CHADBOURNE & PARKE LLP 1301 Avenue of the Americas New York, New York 10019 Telephone: (212) 408-5100 E-mail: ptanck@chadbourne.com E-mail: afoldenauer@chadbourne.com</p> <p><i>Attorneys for Plaintiffs Cross MediaWorks, LLC and TelAmerica Media, LLC</i></p>	<p>s/ Todd J. Poole Todd J. Poole Jon David W. Huffman POOLE LAW GROUP 315 W. Ponce de Leon Avenue, Suite 344 Decatur, GA 30030 Telephone: (404) 373-4008 Email: todd@poolelawgroup.com Email: jondavid@poolelawgroup.com</p> <p>Adam H. Russ Isaac Alony WASSER & RUSS, LLP 80 Maiden Lane, Suite 1502 New York, NY 10017 Telephone: (212) 430-6040 Email: adam@wassruss.com Email: isaac@wassruss.com</p> <p><i>Attorneys for Defendants EMT Holdings, LLC, d/b/a eMedia TRADE, EMT & S Incorporated, a.k.a. Electronic Media Trading & Services, Inc., and Leonard Joseph Fabiano III</i></p>
--	--

011537\0029\11683571